

244 CMR 7.00: ACTION ON COMPLAINTS

Section

7.01: Purpose

7.02: Definitions

7.03: Non-Disciplinary Action

7.04: Disciplinary Action

7.05: Summary Suspension of License, Advanced Practice Nursing Authorization, or Right to Renew License

7.01: Purpose

244 CMR 7.00 sets forth the actions the Board may take on any complaint against a nurse filed with the Board.

7.02: Definitions

Address of Record means the address of a nurse licensed by the Board as provided by the nurse and maintained by the Board on its license database.

Adjudicatory Hearing means an administrative hearing held by the Board to determine the truth and validity of the allegations contained in a complaint filed against a nurse licensed by the Board. The hearing is held in accordance with the State Administrative Procedure Act, M.G.L. c. 30A, and the Standard Rules of Adjudicatory Practice and Procedure at 801 CMR 1.01 *et seq.*

Advanced Practice Nurse (APN) means a Registered Nurse to whom the Board has granted written authorization, under authority of M.G.L. c. 112, § 80B, to engage in advanced practice nursing as defined in 244 CMR 4.00.

Advanced Practice Nursing means professional nursing activity engaged in by a Registered Nurse in accordance with 244 CMR 4.00.

Agreement means a legally binding document reflecting the agreement, including specified terms and conditions, entered into by a nurse licensed by the Board and the Board in resolution of any complaint against such nurse.

APN Authorization means the written authorization granted by the Board to a Registered Nurse in accordance with 244 CMR 4.00 to engage in advanced practice nursing.

Complaint means a communication to, or other information obtained by, the Board alleging that a nurse has engaged in conduct related to the practice of nursing that violates any law or regulation, or both, related to such practice.

Final Decision and Order means the written findings of fact, conclusions of law, and order for sanction or other disposition issued by the Board to a nurse licensed by the Board following the final adjudication of any complaint.

Licensed Practical Nurse (LPN) means a nurse who meets the criteria for licensure under M.G.L. c. 112, § 74A and 244 CMR 8.00, and who holds a valid license to engage in the practice of nursing as a Licensed Practical Nurse.

M.G.L. means Massachusetts General Laws.

Nurse Licensed by the Board means a nurse to whom the Board has at any time issued a license to engage in the practice of nursing as a Registered Nurse or Licensed Practical Nurse, or both, whether or not such license is expired, surrendered, suspended, or revoked.

7.02: continued

Order to Show Cause means a document issued by the Board to a nurse licensed by the Board containing allegations that the nurse has engaged in conduct that violates any law or regulation, or both, related to the practice of nursing. The Order to Show Cause may also order the nurse to appear at an adjudicatory hearing held by the Board to “show cause” why the Board should not take disciplinary action against the nurse’s license or APN authorization, or both, or the right to renew such license. See 801 CMR 1.01(6)(a).

Practice of Nursing means the practice of nursing as defined in M.G.L. c. 112, § 80B and 244 CMR 3.00. The practice of nursing includes, but is not limited to, the provision of a nursing service using telecommunications technology by a nurse physically located *outside* Massachusetts to a person physically located *within* Massachusetts, seeking or accepting any paid or voluntary position as a Registered Nurse or Licensed Practical Nurse, or any paid or voluntary position requiring that the applicant hold a valid license to practice nursing.

Registered Nurse (RN) means a nurse who meets the criteria for licensure under M.G.L. c. 112, § 74 and 244 CMR 8.00 and who holds a valid license to engage in the practice of nursing as a Registered Nurse.

Substance Abuse means a dysfunctional pattern of human response characterized by excessive, inappropriate, or unhealthy use of chemical substances including alcohol or drugs, or both.

Valid License means a license to engage in the practice of nursing in Massachusetts properly issued to a nurse by the Board on the basis of truthful information related to the qualifications for licensure as a Registered Nurse or Licensed Practical Nurse and which license is not expired, surrendered, suspended, or revoked.

7.03: Non-Disciplinary Action

Dismissal. The Board may dismiss a complaint where it determines that:

- (a) the Board lacks jurisdiction over the person named in the complaint;
- (b) there is insufficient evidence to support the complaint;
- (c) the conduct complained of does not warrant disciplinary action; or
- (d) a nurse has successfully completed the Board’s Substance Abuse Rehabilitation Program (SARP) as determined by the SARP and the Board.

7.04: Disciplinary Actions

The actions set forth in 244 CMR 7.04(1) through (6) constitute disciplinary actions the Board may impose on any license to engage in the practice of nursing in Massachusetts or APN authorization, or both, or on the right to renew such license. Except as provided by 244 CMR 7.05, the Board may only impose disciplinary action as part of a final decision and order issued in connection with the adjudication of a complaint, or under the terms of an agreement entered into between a nurse licensed by the Board and the Board in resolution of any complaint.

Where the Board initiates an adjudicatory proceeding, the Board shall conduct such proceeding in accordance with M.G.L. c. 30A, §§ 10, 11, and 12, and the Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01 *et seq.*

A disciplinary action constitutes a public record and is reportable by the Board to other licensing entities and, in accordance with M.G.L. c. 112, § 77, to national disciplinary data reporting systems as disciplinary action on any license to practice nursing in Massachusetts or on any APN authorization, or both, or on the right to renew such license.

(1) Reprimand. The Board may issue a reprimand in the form of a written statement to a nurse licensed by the Board describing the manner in which the nurse has failed to comply with any law or regulation, or both, related to the practice of nursing.

(2) Probation. Probation consists of a period of time during which a nurse who holds a valid license may continue to practice nursing in Massachusetts under terms and conditions specified by the Board. The nurse whose license is subject to probation must comply with the terms and conditions in order to continue to engage in the practice of nursing in Massachusetts.

7.04: continued

(3) Suspension. Suspension of a license to engage in the practice of nursing in Massachusetts or of an APN authorization, or both, is the temporary denial by the Board of the right of a nurse who holds a valid license or APN authorization, or both, to engage in the practice of nursing in Massachusetts or to engage in advanced practice nursing, or both, and to in any way represent himself or herself by title or other designation as a Licensed Practical Nurse or Registered Nurse, or as authorized to engage in advanced practice nursing, or both. Suspension of the right to renew a license to engage in the practice of nursing in Massachusetts is the temporary denial by the Board of the right of a nurse licensed by the Board to renew such license.

(4) Stayed Suspension. The Board may impose a period of suspension on a license to practice nursing in Massachusetts or on an APN authorization, or both, or on the right to renew such license, which suspension the Board does not activate pending compliance by a nurse licensed by the Board with specified terms and conditions.

(5) Surrender. The Board may request the surrender of a license to practice nursing in Massachusetts or APN authorization, or both, or accept the unsolicited surrender of such license or authorization, or both. The Board may also request the surrender of the right of a nurse licensed by the Board to renew such license or accept the unsolicited surrender of such right to renew. A nurse's surrender of a license to engage in the practice of nursing in Massachusetts or APN authorization, or both, terminates the nurse's right to practice nursing in Massachusetts or such authorization, or both, and to represent himself or herself by title or other designation as a Licensed Practical Nurse or Registered Nurse, or as authorized to engage in advanced practice nursing, or both. Surrender of the right to renew a license to practice nursing in Massachusetts terminates the nurse's right to renew such license.

(6) Revocation. Revocation by the Board of a license to engage in the practice of nursing in Massachusetts or APN authorization, or both, terminates the nurse's right to practice nursing in Massachusetts or such authorization, or both, and to in any way represent himself or herself by title or other designation as a Licensed Practical Nurse or Registered Nurse, or as authorized to engage in advanced practice nursing, or both. Revocation of the right to renew a license to practice nursing in Massachusetts terminates the nurse's right to renew such license.

7.05: Summary Suspension of License, Advanced Practice Nursing Authorization, or Right to Renew License

The Board, pending a hearing, may suspend a license to practice nursing in Massachusetts or APN authorization, or both, or refuse to renew such license, upon a majority vote of the full Board that a nurse's continued or further practice presents an immediate and serious threat to the public health, safety, or welfare.

(1) Vote for Summary Suspension. Upon receipt and review by the Board of a complaint supported by affidavits or other documentary evidence indicating that a nurse's continued or further practice of nursing in Massachusetts presents an immediate and serious threat to the public health, safety, or welfare, the Board shall vote on whether such evidence warrants summary suspension of the nurse's license or APN authorization, or both, or the right to renew such license. If a majority of the full Board has determined by vote that a nurse's continued or further practice of nursing in Massachusetts presents an immediate and serious threat to the public health, safety, or welfare, the Board shall make findings and specify the reasons justifying such summary suspension and shall issue an order of summary suspension of the nurse's license or APN authorization, or both, or of the right to renew such license.

(2) Standard for Determining Immediate and Serious Threat. In determining that a nurse's continued or further practice of nursing in Massachusetts presents an immediate and serious threat to the public health, safety, or welfare, the criteria the Board shall evaluate include, but are not limited to, whether:

- (a) the nurse licensed by the Board has engaged in conduct resulting in serious harm to another; or
- (b) the ability of a nurse licensed by the Board to engage in the safe and proper practice of nursing is impaired by substance abuse; or
- (c) the ability of a nurse licensed by the Board to engage in the safe practice of nursing is impaired by a mental or physical illness or condition, or both; or

7.05: continued

- (d) the nurse licensed by the Board has engaged in criminal activity; and
- (e) summary suspension is necessary to prevent an immediate and serious threat to the public health, safety, or welfare.

(3) Order of Summary Suspension. Where the Board has voted by a majority of the full Board that the continued or further practice of nursing by a nurse licensed by the Board presents an immediate and serious threat to the public health, safety, or welfare, the Board shall issue to the nurse a written order of summary suspension of the nurse's license or advanced practice authorization, or both, or the right to renew such license, specifying its findings and reasons for the suspension. The summary suspension order shall also notify the nurse of the date, time, and place of the adjudicatory hearing scheduled to be held on the necessity for the summary suspension. Such hearing shall be held within seven days of issuance of the summary suspension order to the nurse. At the nurse's request, the Board may reschedule this hearing to a date and time mutually agreeable to the nurse and the Board. Any rescheduling of the hearing granted at the nurse's request shall not operate to lift the summary suspension order.

(4) Notice of Summary Suspension Order and Hearing. The Board shall provide notice to the nurse of the summary suspension order and hearing by first class mail and certified mail at the nurse's address of record. In addition, the Board shall use all reasonable efforts to provide such notice to the nurse by hand delivery to the nurse's address of record.

In accordance with 801 CMR 1.01(4)(c), notice of the Board's action shall be presumed to be received by the nurse upon the day of hand delivery as stated herein or, if mailed, three days after deposit in the U.S. mail. The postmark shall be evidence of the date of mailing.

The summary suspension order shall be effective upon the nurse's receipt of notice as specified herein. The nurse shall immediately cease all nursing practice as ordered by the Board.

Within one business day of receipt of said notice, the nurse shall deliver to the Board his or her nursing license, whether current or expired.

(5) Hearing on Necessity for Summary Suspension. Any adjudicatory hearing on the necessity for summary suspension shall be conducted by the Board in accordance with M.G.L. c. 30A, §§ 10, 11, and 12, and the Standard Adjudicatory Rules of Practice and Procedure at 801 CMR 1.01 *et seq.*

At the adjudicatory hearing on the necessity for summary suspension, the Board shall receive oral and documentary evidence limited to determining whether the summary suspension order shall continue in effect pending the final disposition of the complaint.

(6) Continuation or Termination of Summary Suspension Order. Within one business day following the adjudicatory hearing on the necessity for summary suspension, the Board shall vote whether to continue or to terminate the summary suspension order in effect. Within two business days of such vote, the Board shall notify the nurse of its decision in writing by first class mail and certified mail at the nurse's address of record.

Where a majority of the full Board votes to continue the summary suspension order in effect, such order shall be in effect until the adjudication of the merits of the complaint, including judicial review thereof, or until other final disposition of the complaint by the Board. The nurse shall not engage in the practice of nursing as ordered by the Board while the summary suspension order is in effect.

Where a majority of the full Board votes to terminate the summary suspension order, the Board shall reinstate the license or advanced practice authorization, or both, or the right to renew such license, to the status which was in effect immediately before the Board issued the summary suspension order.

Except where it has been rescheduled at the nurse's request or waived by the nurse, if the adjudicatory hearing on the necessity for summary suspension is not held within seven days of the issuance of a summary suspension order, the nurse's license to practice nursing in Massachusetts or APN authorization, or both, or the right to renew such license, shall be deemed reinstated to the status which was in effect immediately before the Board issued the summary suspension order.

REGULATORY AUTHORITY

244 CMR 7.00: M.G.L. c. 13, § 14; c. 112, §§ 61, 74, 74A, 79, 80, 80A, 80B and 80F.